

**DISTRICT OF COLUMBIA COMMISSION ON  
SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES OF  
THE OFFICE OF ADMINISTRATIVE HEARINGS**

**NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF  
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) Seeks Comments Regarding the Potential Reappointment of Administrative Law Judge Claudia A. Crichlow.

This is to notify members of the bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun review of the qualifications for reappointment of Administrative Law Judge Crichlow of the District of Columbia Office of Administrative Hearings. Administrative Law Judge Crichlow has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of her initial two-year term on November 26, 2009.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications applicable to all Administrative Law Judges contained in section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests members of the bar and other attorneys, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Administrative Law Judge Crichlow, which he or she believes will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications should be received by the Commission on or before July 27, 2009 and should be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges  
Office of Administrative Hearings  
District of Columbia Government  
825 North Capitol Street, NE  
Suite 4150  
Washington, D.C. 20002-4210

The members of the Commission are:

The Honorable Gregory Jackson  
The Honorable Anita Josey-Herring  
The Honorable Tyrone T. Butler  
Charlotte Brookins-Hudson  
James McKay

EAGLE ACADEMY PUBLIC CHARTER SCHOOL  
NOTICE OF REQUEST FOR QUALIFICATIONS  
School Construction Project  
Architectural Design Services

Eagle Academy Public Charter School is seeking qualified Architecture Design Firms for a school construction project.

The competitive Request for Qualifications (RFQ) will be released on Friday, June 26th, 2009.

The RFQ package can be obtained by sending an email request to [jsmith@eagleacademypcs.org](mailto:jsmith@eagleacademypcs.org).  
The deadline for replying to the RFQ is July 6th, 2009, at 4:00 pm E.S.T.

No proposals will be accepted after the deadline.

**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

FISCAL YEAR 2009

**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE) located at 51 N Street, NE., Washington, D.C., intends to issue a permit to operate a down draft automotive paint booth at GTS Auto Services, Inc. located at 2310 18<sup>th</sup> Place NE, Washington DC 20018.

The application to operate and the draft permit are all available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours  
Chief, Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environment  
51 N Street, NE, 5<sup>th</sup> Floor  
Washington D.C. 20002

**No written comments postmarked after July 27, 2009 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.

**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

FISCAL YEAR 2009

**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE) located at 51 N Street, NE., Washington, D.C., intends to issue a permit to operate to an existing paint spray booth to Smart Transportation Inc., located at 1801 Adams Street, NE. Washington, D.C. 20018.

The application for the existing paint spray booth and the draft permit are all available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours  
Chief, Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environment  
51 N Street, NE  
Washington D.C. 20002

**No written comments postmarked after July 27, 2009 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.

**DEPARTMENT OF HEALTH  
COMMUNITY HEALTH ADMINISTRATION**

**NOTICE OF FUNDING AVAILABILITY  
for RFA # CHA-BSA-RFA-070109**

**Chronic Disease Prevention, Wellness & Support Services**  
(Authorized by FY 2010 Budget Support Act of 2009)

The Government of the District of Columbia, Department of Health/Community Health Administration is soliciting applications from qualified applicants to provide services addressing the needs of low income, homeless, uninsured, men, women, children and youth in the District of Columbia. Eligibility criteria will vary by program area and interested applicants should consult the RFA.

These funds will be awarded by the District of Columbia Community Health Administration (CHA) using funds provided by the FY 2010 Budget Support Act of 2009 contingent upon availability of funds.

Approximately \$3,000,000 will be able to support these services:

- **Chronic Disease** - \$700,000 – Programs to address specifically diabetes, obesity and other chronic disease areas.
- **Asthma Prevention** - \$250,000 – Community-based asthma prevention programs
- **Pre-school Immunization** - \$150,000 – Programs to address specifically pre-school immunization programs.
- **Allied Health Training** - \$750,000 – Support existing allied health training programs at universities located in the District of Columbia.
- **Home Delivered Meals** - \$400,000– Provide for clinical nutritional home delivered meals for individuals living with life threatening diseases.
- **Perinatal Initiative**- \$750,000 - To develop and implement a comprehensive clinically-based health-risk prevention program to reduce the incidence of infant mortality and morbidity in the District of Columbia

The Request for Applications (RFA) will be released on **Wednesday, July 1, 2009**, and the deadline for submission is **Thursday, August 6, 2009**. RFAs may be obtained from the Department of Health, 825 North Capitol St., NE – 3<sup>rd</sup> Floor Reception Area. The RFA will also be available on the Office of Partnerships and Grants Services website, [www.opgs.dc.gov](http://www.opgs.dc.gov) under the District Grants Clearinghouse. A Pre-Application meeting will be held in the District of Columbia at the DC Department of Health Headquarters, 825 North Capitol St, NE, Washington, DC 20002, Conference Room 4131, Thursday, July 9, 2009, from 9:30 am – 11:30 am.

Applicants obtaining this RFA through the Internet should provide the CHA Administration with the following information c/o Charles Nichols ([charles.nichols@dc.gov](mailto:charles.nichols@dc.gov)) in order to receive any amendments or clarifications which might be issued:

- Name of organization;
- Key contact;
- Mailing address;
- Telephone and fax numbers; and E-mail address.

Please contact Charles Nichols at (202) 442-9342 for additional information.

**DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****Neighborhood Stabilization Program Draft Application**

On February 27, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009. The purpose of the Act is to stimulate the economy with a focus on job creation and retention and investing in long term infrastructure. Specifically, the Act appropriated \$1.93 billion in a competitive second round of Neighborhood Stabilization Program (NSP) funds to states and local governments to carry out, on an expedited basis, eligible activities under NSP. The Department of Housing and Community Development has developed a draft application for public comment.

The Department held a series of internal and external stakeholder meetings to develop this application. Information about the requirements and thresholds for the NSP application can be found at [www.hud.gov/nsp](http://www.hud.gov/nsp).

The Department's draft submission is available on the internet at [dhcd.dc.gov](http://dhcd.dc.gov). To submit comments or for additional information on these or other stimulus programs, please contact Kathryn Howell by phone at (202) 442-7200 or by email at [housing.recovery@dc.gov](mailto:housing.recovery@dc.gov). The public comment period will close on July 10, 2009. The final application is due to the Department of Housing and Urban Development on July 17, 2009.

**DEPARTMENT OF HUMAN SERVICES  
FAMILY SERVICES ADMINISTRATION**

**NOTICE OF FUNDING AVAILABILITY**

**District of Columbia Fatherhood Initiative/Community Access Program (DCFI/CAP)  
RFA # 0807-10**

**IMPORTANT NOTICE**

**The Department of Human Services (DHS) has awarded multiple grants through the DCFI/CAP.  
Previously successful applicants may not apply under this RFA notice.**

The DC Fatherhood Initiative/Community Access Program (DCFI/CAP) will make sub-grants pending the availability of funds through a Fiscal Year 2010 continuation award from the US Department of Health and Human Services (HHS) Administration for Children and Families (ACF)/Office of Family Assistance (OFA), *Promoting Responsible Fatherhood Community Access Program*.

The grant award is made pursuant to the legislative authority of the Deficit Reduction Act of 2005 (Public Law (P.L. 109-170)) which amends Title IV, Section 403 (a)(2)(C) of the Social Security Act (42. U.S.C. 603 (a)(2)) to authorize competitive grants for States to develop and implement projects that support any of the three authorized activity areas: Healthy Marriage, Responsible Parenting and Economic Stability.

The objective of this effort is to provide a person-centric approach to service delivery that will meet the needs of fathers and their families to ensure that fathers have the fundamental skills necessary to contribute to the financial, emotional and social development of their children. In addition, the programs and services offered attempt to remove the barriers (economic, educational, social, etc.) that negatively impact a father's involvement and support family and child(ren).

DHS, through this notice will make approximately *ten* (10) new grants in FY 2010 in an amount not-to-exceed *fifty thousand dollars* (\$50,000.00) each. Applications are requested from all non-governmental and private entities including, grass-roots community and faith-based organizations that are non-profit social service providers headquartered in the District of Columbia.

Starting Monday, June 29, 2009, applications can be obtained online by visiting the DC Office of Partnerships and Grants Services (OPGS) website at [www.opgs.dc.gov](http://www.opgs.dc.gov) and following the link entitled: District Grants Clearinghouse, or in person from Ms. Betty Ervin, Program Assistant for the Office of Grants Management at 64 New York Avenue, N.E., Washington, DC, 6<sup>th</sup> floor. Ms. Ervin can be reached at: (202) 671-4397.

A Pre-Application Conference will be held on Thursday, July 23, 2009 from 12:00 PM – 2:00 PM at the Department of Human Services, 64 New York Avenue, N.E., Washington, DC, 6<sup>th</sup> floor, Directors Conference Room. *Please RSVP to Ms. Priscilla Burnett no later than 4:45 PM on Wednesday, July 22, 2009, at (202) 671-4738 or email: [priscilla.burnett@dc.gov](mailto:priscilla.burnett@dc.gov).*

**Application Submission Deadline is Friday, August 28, 2009 at 3:30 PM**

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

ERRATUM NOTICEET00-2, IN THE MATTER OF POTOMAC ELECTRIC POWER COMPANY'S  
PUBLIC SPACE OCCUPANCY SURCHARGE ELECTRICITY TARIFF, P.S.C.-  
D.C. No. 1

The Public Service Commission of the District of Columbia ("Commission") published, in the *D.C. Register* at 56 D.C. Reg. 004482-004483, June 12, 2009, a Notice of Final Rulemaking approving the Potomac Electric Power Company's ("Pepco") Rider Public Space Occupancy Surcharge.

The substance of the rulemaking notice was approved by the Commission. However, the text of the final rules contained a typographical error in Paragraph 3 of the Notice of Final Rulemaking. The corrected text is set forth below and should read as follows:

3. In its filing, Pepco states that its "updated Rider PSOS surcharge is to become effective with meter readings on and after March 1, 2009."<sup>1</sup> The updated Rider PSOS consists of two parts: 1) one component reflects the estimated payments made by Pepco to the District of Columbia for the current year; and 2) the other component reflects the over or under recovery from the prior year. The supporting calculations for the updated Rider PSOS illustrate a change from \$.00161 per kilowatthour to \$.00226 per kilowatthour, a decrease an increase of 40.4 percent in the surcharge rate.<sup>2</sup>

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<sup>1</sup> ET00-2, Rider PSOS at 1.

<sup>2</sup> ET00-2, Rider PSOS at 2.

**THURGOOD MARSHALL ACADEMY PCHS****NOTICE OF REQUEST FOR PROPOSALS****National School Lunch Program**

Thurgood Marshall Academy PCHS is advertising the opportunity to bid on the delivery of breakfast and lunch meals to children enrolled at the school for the 2009-2010 school year. All meals must meet at a minimum, but are not restricted to, the USDA National School Lunch Program meal pattern requirements. Additional specifications will be outlined in the Invitation for Bid (IFB). All bids not addressing all areas as outlined in the IFB will not be considered.

**The competitive Request for Proposals will be released on Monday, June 29, 2009.**

**The deadline for submission is Friday, July 17, 2009 at 4:00 pm E.S.T.  
NO BIDS WILL BE ACCEPTED AFTER THE DEADLINE.**

Mail the application to:           Attn. Nora Moore  
  Operations Manager  
  Thurgood Marshall Academy  
  2427 Martin Luther King Jr. Avenue, SE  
  Washington, DC 20020

**TWO RIVERS PUBLIC CHARTER SCHOOL**  
**NOTICE OF REQUEST FOR PROPOSALS**

Two Rivers Public Charter School, in compliance with Section 2204 (c) of the District Of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest for the following service.

**I. Acoustical Improvements Sought:**

Installation of acoustical improvements to elementary school lobby and common gathering space.

For Additional Information and Statements of Work E-Mail: [procurement@tworiverspcs.org](mailto:procurement@tworiverspcs.org).  
Deadline for submissions is July 10, 2009 at noon via e-mail ([procurement@tworiverspcs.org](mailto:procurement@tworiverspcs.org)) or hard copy at the school's offices:

Two Rivers Public Charter School  
1227 4<sup>th</sup> Street NE  
Washington, DC 20002

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment**

**Application No. 17842 of D.C. Teacher's Federal Credit Union**, pursuant to 11 DCMR § 3103.2, for a use variance to allow the continued use of the former Edmonds Public School for general office use under section 330.5, in the R-4 District at premises 901-903 D Street, N.E. (Square 938, Lot 809).

**Hearing Dates:** November 25, 2008 and January 6, 2009  
**Decision Dates:** May 5, 2009 and June 9, 2009

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report expressing conditional support for the application. The Board addressed the ANC's concerns in deliberating on the application. The Office of Planning also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a use variance from § 330.5. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from § 330.5, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit No. 36 – Report & Plans for Property Improvement & Landscaping, be **GRANTED, SUBJECT to the following CONDITIONS:**

**BZA APPLICATION NO. 17842****PAGE NO. 2**

1. The Applicant shall replace/install the first set of two heat pumps and an HVAC unit by September 30, 2009.
2. The Applicant shall replace/install the second set of two HVAC units and one heat pump by September 30, 2010.
3. The Applicant shall install a new wood fence around the HVAC units and heat pumps, as shown on site plan C1 (Exhibit No. 36), by September 30, 2009.
4. The Applicant shall plant evergreen-type shrubs to landscape and buffer the wood fence enclosing the mechanical equipment, as shown on site plan C1 (Exhibit No. 36), by October 31, 2009.

**VOTE:**     **3-0-2**     (Marc D. Loud, Anthony J. Hood and Shane L. Dettman to approve;  
no other Board members participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER: JUNE 17, 2009**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF

**BZA APPLICATION NO. 17842**

**PAGE NO. 3**

ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17850-A of JBG/14<sup>th</sup> & S LLC**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the lot occupancy requirements under § 772, a special exception under § 411.11 for roof structures with unequal heights, special exception relief under § 1906.1 from provisions of the ARTS overlay district restricting eating and drinking establishments under § 1901.6 and height under § 1902.1, and a special exception under § 2120.6 from the parking requirement for an addition to a historic structure to allow construction of a mixed-use residential and retail development in the ARTS/C-3-A district at premises 1407 S Street, N.W. and 1802, 1804, 1810, 1816, and 1818 14<sup>th</sup> Street, N.W. (Square 206, Lots 1, 210, 230, 819, 820, and 821).

**HEARING DATE:** December 2, 2008  
**DECISION DATES:** January 6, 2009 and February 3, 2009  
**ORDER DATE:** April 1, 2009  
**RECONSIDERATION DATE:** May 5, 2009

**ORDER DENYING RECONSIDERATION**

By order dated April 1, 2009, the Board approved an application submitted July 3, 2008, by JBG/14<sup>th</sup> & S, LLC (Applicant), the owner of the property that is the subject of the application for a variance from the maximum lot occupancy requirement under § 772.1, a special exception under § 411.11 for roof structures with unequal heights, special exceptions under § 1906 from provisions of the Uptown Arts-Mixed Use (ARTS) overlay district pertaining to restrictions on eating and drinking establishments (§ 1901.6) and height (§ 1902.1), and a special exception under § 2120.6 for relief from the parking requirement for an addition to a historic structure, so as to develop a mixed-use residential and retail development on a site zoned ARTS/C-3-A in Square 206, Lots 1, 210, 230, 819, 820, and 821. Parties in this proceeding were the Applicant, Advisory Neighborhood Commission 2B, and Tom Coumaris, James Bogden, and Charles Taylor, who all reside near the subject property and were opposed to the application.<sup>1</sup>

On April 8, 2009, a party in opposition, Tom Coumaris, submitted a timely motion for reconsideration of the order. The motion “requests that the ... case be reconsidered” for reasons including assertions that (i) advertisement of the case was “insufficient, both in public posting and in advertisement as special exceptions instead of variances”; (ii) the Board made an incorrect “assumption of the correctness of combining lots to achieve an address on S Street, NW ... so as to [void] the applicant’s need to provide a rear yard area abutting the alley,” since Swann Street “does not qualify as a rear yard”; (iii) the Applicant “did not meet the burden of proof for the

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<sup>1</sup> By letters dated December 22, 2008, two additional parties, Peter Knapp and Joseph Freeman, withdrew their opposition to the application.

standards of obtaining a variance or a special exception; (iv) “evidence was presented by Applicant’s attorney and not by Applicant”; and (v) “area calculations were arrived at incorrectly.”

By letter dated April 20, 2009, the Applicant submitted a timely response in opposition to the motion. The Applicant objected that the motion for reconsideration did not state specifically the grounds of the motion, as required by § 3126.4. According to the Applicant, two of the five claims of error in the motion (regarding adequacy of notice and burden of proof) reiterated issues that were raised at the hearing and addressed in the Board’s order that approved the application; one claim of error (regarding rear yard regulations) was groundless because no rear yard issue was in the application before the Board; and two allegations (concerning presentation of evidence by the Applicant’s attorney and area calculations) raised new claims of error that were not raised in the course of the public hearing and consisted of “terse allegations of procedural and substantive error [that] lack any substance that would permit the Board to evaluate the adequacy of its decision and order.” The Applicant argued that the Board should deny the motion for reconsideration in light of the motion’s “failure to provide grounds for any of the claims of error” and the “overwhelming evidence in the record that supports the Board’s findings and conclusions on the requested areas of relief.”

#### CONCLUSIONS OF LAW

Tom Coumaris, a party in opposition in this matter, submitted a timely request for reconsideration of the Board’s order in this proceeding. A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. 11 DCMR § 3126.4.

The Board was not persuaded that the motion by the party in opposition alleged any grounds to reconsider its decision to grant the relief requested by the Applicant. The motion did not state specifically any respect in which the Board’s decision was claimed to be erroneous, and the “reasons for reconsideration” listed in the motion did not present any new argument or testimony relevant to the Board’s deliberations in this case. Rather, the motion provided only a conclusory list of perceived errors, without any reference to evidence in the record or any argument to explain the allegation. The Board concurs with the Applicant that the motion failed to provide grounds for any of the claims of error, as required by § 3126.4.

Accordingly, it is therefore **ORDERED** that the motion for reconsideration is **DENIED**.

**VOTE:**           **4-0-1** (Marc D. Loud, Shane L. Dettman, Gregory N. Jeffries and Mary Oates Walker (by absentee vote) voting to deny).

#### BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved the issuance of this order.

**FINAL DATE OF ORDER: JUNE 18, 2009**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**

**Application 17931 of M. Sikder**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, for the construction of a new one-family detached dwelling in the R-3 District at premises 5032 B Street, S.E. (Square 5326, Lot 24).

**HEARING DATE:** June 16, 2009  
**DECISION DATE:** June 16, 2009 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E did not submit a report related to the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under section 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2101.1, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:**           **3-0-2**           (Shane L. Dettman, Marc D. Loud, and Michael G. Turnbull  
to approve; no other Board members participating)

**BZA APPLICATION NO. 17931**  
**PAGE NO. 2**

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER: JUNE 19, 2009**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 03-12I/03-13I  
Z.C. Case No. 03-12I/03-13I**

**Capper/Carrollsbury Venture, LLC and the D.C. Housing Authority  
(Application for Extension of Time for First-Stage Approval and Overall Phasing of PUD  
and Extension of Time to File a Building Permit for Community Center)  
April 27, 2009**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 19, 2009, to consider an application from Capper Carrollsbury Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively, the "Applicant"), for an extension of the first-stage approval and phasing of the overall planned unit development ("PUD"), as well as an extension of the time period in which to file a building permit for the construction of the community center in Square 881W. The Commission considered the extension request pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves extensions of the both the first-stage approval and the time for building the community center. The Commission determined that this extension request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

**FINDINGS OF FACT**

**Background and Prior Capper Carrollsbury Approvals**

1. Pursuant to Order No. 03-12/03-13, effective October 8, 2004, the Commission granted preliminary approval of the PUD for the following properties: Square 737, those portions of Lot 814 and Reservation 17A that lie south of the southern right-of-way line of I Street extended; Square 799, Lots 20, 27, 28, 29, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 803, 805, 807, 808, 809, 816, 818, 819, 825, 826, and 827; Square 800, Lots 25, 26, 27, and 28; Square 824, Lots 37, 38, and 39; Square N853, Lot 809; Square 880, Lot 24; Square W881, that part of Lot 800 within 132 feet of 5<sup>th</sup> Street; Square 882, Lot 76; and all of Squares 739, 767, 768, 769, 797, 798, 825, and S825.
2. The Commission also granted consolidated approval of the PUD for the following properties: Square 824, Lots 37, 38, and 39; Square S825, Lots 31, 32, and 33; Square 880, Lot 24; and all of Squares 797, 798, and 825. The Commission also granted a PUD-related map amendment to rezone the following properties from R-5-B to CR upon completion of the second-stage approval of the PUD: Square 769, that portion lying more than 145 feet from the northern right-of-way line of M Street (including a portion of Reservation 17D); Square 882, that portion lying south of the midpoint of the Square; and all of Squares 767 and 768 (including Reservations 17B and C).
3. The Commission has approved a number of applications since issuing Order No. 03-12/03-13 in order to implement the redevelopment, including:

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- Order No. 03-12B/03-13B approving a minor modification to allow for construction of the multi-family building in Square 825S to a height of 48 feet, 3¾ inches;
- Order No. 03-12A/03-13A granting second-stage approval for Lots 44, 45, 46, 47, 48, 49, and 50 in Square 799; Lots 20, 25, 26, 27, 28, 816, 818, 819, and 820 in Square 800; and Square 881W and modifying portions of the parking requirements for the consolidated PUD approval;
- Order No. 03-12C/03-13C granting second-stage approval for parts of Lots 18, 20, and 21 in Square 769 to construct an office building, and Order No. 03-12F/03-13F approving a modification to increase the building's measured building height from 110 feet to 130 feet, and to increase the gross floor area of the building from 207,785 square feet to 234,182 square feet;
- Order No. 03-12D/03-13D approving a minor modification to change the designation of the multi-family building in Square 825S such that it is not required to be exclusively senior housing and requiring off-site parking; and
- Order No. 03-12E/03-13E approving a minor modification to allow for Squares 767, 768, and 882 to be used as temporary surface parking lot accessory to the new Nationals ballpark for a period of no more than five years.

#### **The Current Application, Parties, and Hearing**

4. On July 3, 2008, the Applicant filed an application seeking, among other things, an extension of the first-stage approval and overall phasing of the PUD and an extension of the period in which to file a building permit application and to commence construction on the community center in Square 881W, as well as a number of modifications to the conditions of the first-stage approval.
5. At its public meeting on September 8, 2008, the Commission instructed the Applicant to file a separate application for each of the requested actions being sought by the Applicant.
6. On September 18, 2008, the Applicant submitted separate application materials for: (1) second-stage review and approval of a PUD and modifications for property located in Squares 769 and 882 (Case No. 03-12G/03-13G); (2) approval to modify conditions of the first-stage approval related to remaining portions of the overall PUD to be developed in Squares 739, 767, and 768, and conditions relating to the number of parking spaces required for the multifamily building in Square 825S (Case No. 03-12H/03-13H); and (3) an extension of time for the validity of the first-stage PUD approval, and additional time to file a building permit application and commence construction of the community center in Square 881W (Case No. 03-12I/03-13I).

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7. At is public meeting on October 20, 2008, the Commission voted to schedule a public hearing on all three applications.
8. On December 5, 2008, the Applicant submitted a letter to the Commission providing additional information on the requested extensions.
9. On March 10, 2009, DCHA submitted a letter to the Commission stating that it was unable to issue the bonds necessary to finance the infrastructure and community center in the development and requesting an extension of the first-stage PUD and the construction of the community center. DCHA indicated that the issuance of a Payment in Lieu of Taxes (“PILOT”) bond is directly dependent on the development activity on the Capper Carrollsburg site, access to the capital markets and sufficient real estate tax revenues to pay debt service on the bonds. DCHA further indicated that the present economic downturn has dramatically impacted each of these components preventing DCHA from moving forward with the PILOT bond issuance at this time. Specifically:
  - the capital markets have been hard hit in this economic downturn. The mergers, consolidations, bankruptcies, and restructuring of key players in the capital markets have made access to capital for public infrastructure needs more difficult. According to DCHA's investment advisors, the market should see steady improvement this year which would then permit the Capper PILOT to become viable in either the first or second quarter of 2010;
  - the key to issuing a sizable PILOT bond lies in the construction of commercial properties at the site;
  - softening of the real estate market, generally, has impacted DCHA's ability to issue a PILOT bond. Faced with an increase in the vacancy rate for commercial space in the near Southeast quadrant of the District, DCHA's development partners have decided not to move forward with the commercial components without having first identified anchor tenants for the buildings. Although the first taxable residential component closed its financing in May 2008, there has been a dramatic downturn in the Low Income Housing Tax Credit market, the principal financing vehicle for the public housing units. Therefore, without relief in this area, construction of future residential components might be in jeopardy of slowing down considerably; and
  - equally important, access to financing from private lenders has become more difficult and more expensive. Moreover, government resources previously relied upon as gap financing such as Housing Production Trust funds, HOME, or CIP funds have been reduced considerably and the demand for such funds far exceeds the availability of such funds.

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10. After proper notice, the Commission held a combined public hearing on the applications on March 19, 2009. The parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located, and ANC 6B, the adjacent ANC.
11. Three principal witnesses testified on the extension request on behalf of the Applicant at the March 19, 2009 public hearing, including David Cortiella, on behalf of the DCHA; Dan McCabe, on behalf of Capper Carrollsburg Venture, LLC; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Based upon his professional experience, as evidenced by the resume submitted for the record, Mr. Sher was qualified by the Commission as an expert in his field.
12. The Office of Planning (OP") testified at the public hearing in support of the extension request.
13. ANC 6D submitted a letter and resolution (Exhibit 7) indicating that at a duly noticed public meeting on March 9, 2009, at which a quorum was present, ANC 6D voted 5-1-1 to support the application to extend the first-stage approval and phasing of the overall PUD, but only on the condition that the Commission require the Applicant to file a building permit application for the community center building in Square 881W by January 1, 2010, to commence construction of the community center by January 1, 2011, complete construction of the community center by July 1, 2012, and commit to provide 50 parking spaces at 600 L Street, S.E. for certified health care workers who care for seniors in 900 5<sup>th</sup> Street, S.E. and 410 M Street, S.E. until construction commences on 600 L Street, S.E.
14. ANC 6B submitted a letter (Exhibit 5) indicating that at its regularly called and properly noticed meeting on February 10, 2009, with a quorum present, ANC 6B voted unanimously (8-0) to support the time extension for the PUD to 2013, but opposed further delay in the construction of the community center building in Square 881W.
15. Kenan Jarboe, an ANC 6B Commissioner, testified at the public hearing in his individual capacity, and indicated that the ANC opposed the applications, but would remove its opposition if the Applicant agreed to construct the community center at the same time as the residential units.
16. Robert Siegel, an ANC 6D Commissioner, testified at the public hearing in his individual capacity, and indicated that he opposed the requested extension of time to start construction of the community center building, but supported the requested extension for the remaining portions of the development.

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17. Ron McBee, an ANC 6D Commissioner, testified at the public hearing in his individual capacity, and indicated that he supported the requested increase in office building height and other modifications proposed under applications 03-12G/03-13G and 03-12H/03-13H, with the exception of the request to reduce the amount of parking, and that he opposed the requested extension of time to start construction of the community center building.
18. At its public meeting on April 27, 2009, the Commission voted to approve the extension of the first-stage PUD approval as requested, and to approve an extension of the time to file a building permit for the construction of the community center in Square 881W to July 1, 2010, with construction to begin by July 1, 2011.

### **The Requested Extensions**

19. The Commission granted preliminary and consolidated approval for the Capper/Carrollsborg redevelopment in Order No. 03-12/03-13. Pursuant to Condition No. 27 of that order, the first-stage approval expired on October 8, 2008.
20. Pursuant to Order No. 03-12A/03-13A, the Commission granted second-stage approval for portions of Squares 799 and 800 and the community center in Square 881W. Condition No. 5 of that order provided that an application for a building permit to construct the community center must be filed no later than September 18, 2008, and that the construction of the community center must commence no later than September 18, 2009.
21. Condition No. 7 of Order No. 03-12A/03-13A further provided that applications for second-stage approvals for the developments located in Squares 739, 767, 768, 769, and 882 must be filed no later than October 31, 2008.
22. The Applicant requested an extension to Condition No. 27 of Order No. 03-12/03-13 to provide that the first-stage application is valid until December 31, 2013.
23. The Applicant also requested an extension to Condition No. 7 of Order No. 03-12A/03-13A to provide that applications for second-stage approvals for the remaining developments in Squares 739, 767, and 768 must be filed no later than December 31, 2013.
24. Finally, the Applicant requested an extension of Condition No. 5 of Order No. 03-12A/03-13A to provide that a building permit application for the community center in Square 881W must be filed no later than January 1, 2011, and that construction of the community center must commence no later than January 1, 2012.

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25. The Applicant's extension request was served on all parties to the original PUD application, and all of those parties were allowed 30 days to respond to the request.
26. There has been no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justifications for that approval.
27. The Applicant has been unable to secure sufficient financing to allow the project to move forward in accordance with the deadlines established by Condition No. 27 of Order No. 03-12/03-13 and Condition Nos. 5 and 7 of Order No. 03-12A/03-13A. The inability to obtain financing is due to economic and market conditions that are beyond the Applicant's reasonable control. The Applicant has proceeded diligently with the prior phases of the redevelopment and has taken a number of actions to move the project forward since the original approval of the PUD. As a consequence of the recent economic downturn, DCHA has been unable to issue the bonds necessary to finance the construction of the community center and the infrastructure needed to serve the development. The Commission, therefore, finds that extensions are necessary to allow the PUD to move forward.

#### **Office of Planning Report**

28. By report dated August 29, 2008, OP recommended that the Commission schedule a public hearing on the applications.
29. By report dated October 10, 2008, OP indicated that the Applicant submitted the information requested by the Commission at that September 8, 2008 public meeting, and that after reviewing the additional materials, OP continued to recommend that the Commission schedule a public hearing on the applications.
30. By report dated March 9, 2009, OP recommended approval of the requested extensions. OP indicated that the Applicant has made a logical case for why the slowdown in economic activity has lengthened the amount of time needed to construct the properties needed to generate the real estate taxes necessary for the issuance of a bond for PILOT or other bond issues.

#### **Advisory Neighborhood Commissions**

33. Both ANC 6D and ANC 6B opposed the Applicant's request for an extension of time for the community center building. However, the Applicant has submitted evidence indicating that, as a result of current economic conditions, DCHA has been unable to finance construction of the community center building. Not approving extensions would result in the community center and PUD approvals expiring, which would require the Applicant to file new PUD applications and reinitiate the PUD process, thus ultimately resulting in the project being constructed much later than the Applicant

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currently proposes. The Commission concurs with the ANCs that the community center is an important element of the PUD, and therefore finds that the time extension for the community center should not be as long as that proposed by the Applicant.

### **CONCLUSIONS OF LAW**

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties and all parties are allowed 30 days to respond; (b) there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) there is good cause shown for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good-faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order. (11 DCMR § 2408.11.)

The Commission concludes the extensions request complied with the notice requirements of 11 DCMR § 2408.10(a) by all parties having been served with a copy of the request allowing them 30 days to respond.

The Commission is required to hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11, and the hearing shall be limited to the specific and relevant evidentiary issues in dispute. (11 DCMR § 2408.12.) Although there was no material factual conflict with respect to whether the Applicant met the criteria set forth in § 2408.11, the Commission nonetheless held a combined public hearing on the extension request and the other related applications on March 19, 2009.

The Commission concludes that there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission further concludes that the Applicant presented substantial evidence of good cause for the extensions based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good-faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control. The Commission recognizes the difficult financial circumstances faced by the Applicant and concludes that approval of the requested extension is appropriate for

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the first-stage approval and phasing of the overall planned unit development. However, reiterating the importance of the community center as an element of the approved PUD, the Commission grants a shorter extension of time than requested by the application to seek a building permit and begin construction of the community center. The Commission notes that the Applicant previously received an extension of time for seeking a building permit for the community center from the original deadline of July 1, 2005, and that the ANCs opposed approval of another extension in this proceeding.

The Commission concludes that its decision is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The approval of the time extensions is not inconsistent with the Comprehensive Plan.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of an extension of the first-stage PUD approval and an extension of the period of time in which to file an application for a building permit to construct the community center in Square 881W, and the following conditions in prior orders related to the PUD are hereby revised to read as follows:

1. Condition No. 27 of Order No. 03-12/03-13 shall read as follows:

The second-stage approval may be requested in one or more applications. If there is to be only one second-stage application, that application shall be filed within 18 months of the effective date of this Order. If there is to be more than one second-stage application, the first second-stage application shall be filed within 18 months of the effective date of this order and that application shall include a phasing plan for the remaining applications. Approval of the first-stage application shall be valid until December 31, 2013.

2. Condition No. 5 of Order No. 03-12A/03-13A shall read as follows:

The Applicants shall file an application for a building permit for the community center no later than July 1, 2010 and shall commence construction of the community center no later than July 1, 2011.

3. Condition No. 7 of Order No. 03-12A/03-13A shall read as follows:

The second-stage approval for the remaining portions of the project in Squares 739, 767, 768, and 769, which can be filed in phases, must be filed by December 31, 2013, not including Van Ness Elementary School which will proceed at the time determined by the Board of Education and the District Government. ~~will be~~

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~~filed in phases. Phase II will consist of the M Street office building, which may be built out in two (2) sub-phases, along with the residential development in Square 882. The 250 M Street office building with first floor retail in Square 769 will be Phase III of the development. Phase IV of the development will include high rise apartments in Squares 767, 768, 769, and 739. Development of the Van Ness Elementary School will occur during Phase V of the development. The applications for final approval of Phases II through III of the development must be filed by October 31, 2008. The applications for Phase IV of the development must be filed by December 31, 2013. The order of the phases may change subject to future market demands. Phase V is not under the control of the Applicants and will proceed at the time determined by the Board of Education and the District Government.~~

The Owner is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Owner to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that extensions are **GRANTED** as stated herein.

On April 27, 2009, upon the motion of Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **ADOPTED** the Order to extend Condition No. 27 of Order No. 03-12/03/13 and Condition No. 7 of Order No. 03-12A/03-13A at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, and Peter G. May to adopt; Michael G. Turnbull to adopt by absentee ballot; William W. Keating, not having participated, not voting).

On April 27, 2009, upon the motion of Commissioner May, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** the Order to extend Condition No. 5 of Order No. 03-12A/03/13A at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, and Peter G. May to adopt; Michael G. Turnbull to adopt by absentee ballot; William W. Keating, not having participated, not voting).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on June 26, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**AND**

**Z.C. ORDER NO. 06-32**

**Z.C. Case No. 06-32**

**(Text Amendment – 11 DCMR)**

**(Text amendments to include Square 766 in the Capitol South TDR receiving zone)**

**January 12, 2009**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

**ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**  
**Z.C. ORDER NO. 08-04A**  
**Z.C. Case No. 08-04A**  
**Southeast Federal Center Overlay Review**  
**FCW SEFC, LLC on behalf of the United States General Services Administration**  
**March 2, 2009**

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on March 2, 2009 to consider an application by FCW SEFC, LLC (the "Applicant") for property owned by the United States General Services Administration ("GSA"), for review and approval of exterior renovations to an existing building and new buildings and structures to be erected within the SEFC/W-0 Zone District, pursuant to § 1805.11 of the Southeast Federal Center Overlay provisions of the District of Columbia Zoning Regulations ("Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations. In addition, as permitted under § 1809 of the Zoning Regulations, the Applicant also requested approval under § 1805.6 for uses permitted in the Open Space Area of the SEFC/W-0 Zone District; special exception approval under § 925.1 for multiple retail and service uses within the W-0 Zone District; and special exception approval under § 411.11 for roof structures not meeting the setback requirements of the Zoning Regulations. Finally, as permitted under § 1809.1 of the Zoning Regulations, the Applicant requested variance relief from the parking requirements of § 2101.1, height requirement of § 930.1, and waterfront setback requirement of § 938.1 of the Zoning Regulations.<sup>1</sup>

The property that is the subject of this application is a portion of the Southeast Federal Center that is identified as Parcel P and is known as Square 771, Lots 801 and 802 (the "Property"). The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below the Commission hereby approves the application.

**FINDINGS OF FACT**

**Application, Parties, and Hearing**

1. The Property consists of approximately 397,320 square feet of land and is located in the SEFC/W-0 Zone District.
2. The Property is located on land that is controlled by the federal government, but was authorized for private development by an Act of Congress in 2000. See Southeast Federal Center Public-Private Development Act of 2000, Pub. Law. 106-407 (2000) (the "Act"). The Applicant prepared a master plan for the entire Southeast Federal Center and, under the authority of the Act, GSA selected the Applicant as the master developer for the site. The Master Plan was presented by GSA and the Applicant to the Zoning

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<sup>1</sup> In its initial application, the Applicant sought relief from the parking requirements as a special exception under § 2120.6 of the Zoning Regulations. Prior to the hearing, the design was modified to remove a building connection between the new buildings and historic structure, and the Applicant amended the application to request variance relief from the parking requirements. In its initial application, the applicant also sought relief from the lot requirement of § 3202.3 of the Zoning Regulations, but amended the application to remove the request prior to the public hearing.

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Commission for review and approval, and the Commission approved the SEFC Overlay District (the "SEFC Overlay") in order to ensure that future development of the Southeast Federal Center would proceed according to the Master Plan.

3. The SEFC Overlay calls for the development of a publicly-accessible park along the Anacostia River with uses as permitted in the W-0 District. (11 DCMR § 1802.8.) Other relevant objectives of the SEFC Overlay include: encourage a variety of support and visitor-related uses, such as retail, service, entertainment, and cultural uses; provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings; provide for continuous publicly-accessible open space along the waterfront; require suitable ground-floor level retail and service uses near the SEFC/W-0 Zone District; and encourage the design and development of properties in a manner that is sensitive to the historically significant buildings within the SEFC. (11 DCMR § 1802.)
4. The purposes of the SEFC/W-0 Zone District are to (a) encourage open space; (b) provide a lively, interactive waterfront environment; (c) discourage parking; (d) provide a Development Area for retail and cultural uses; (e) provide an Open Space Area, intended to be the site of open space recreation use as well as limited uses that are directly waterfront dependent; and (f) allow for a continuous publicly-accessible pedestrian and bicycle trail along and adjacent to the waterfront as part of the Anacostia Waterfront Trail system. (11 DCMR § 1805.1.)
5. In Case No. 08-04, the Applicant presented the overall design and layout of its proposed waterfront park on Parcel P along the Anacostia River and requested approval of certain structural elements within the park, as well as related relief required to construct the improvements ("Phase I"). The Commission approved Phase I of the waterfront park on May 29, 2008 in Order No. 08-04.
6. On July 7, 2008, the Applicant filed an application, on behalf of GSA, for review and approval of exterior renovations to an existing building and the construction of new buildings and structures within its proposed waterfront park, pursuant to § 1805.11 of the Zoning Regulations ("Phase II"). Furthermore, pursuant to §§ 1805.11 and 1809.1 of the Zoning Regulations, the Applicant requested approval of uses in the SEFC/W-0 Open Space Area; special exception approval of retail and service uses in the W-0 Zone District for the renovated and new buildings; special exception approval of roof structures; and variance relief from the parking, height, and waterfront setback requirements of the Zoning Regulations.
7. After proper notice, the Commission held a hearing on the application on March 2, 2009. Parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located.

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8. At its duly noticed meeting on February 9, 2009, ANC 6D voted 6-0-1 to support the application for design review, special exception, and variance relief. In its February 10, 2009 report, ANC 6D noted that the Southwest/Near Southeast community eagerly anticipates taking advantage of the amenities that the park and retail space included in the application will provide. (Exhibit 15.)
9. The Office of Planning filed a report and testified in support of the application at the public hearing. (Exhibit 16.) In addition, a representative of the Deputy Mayor for Planning and Economic Development testified in support of the application at the public hearing.
10. Expert witnesses appearing on behalf of the Applicant included: Rick Parisi, CLARB, RLA, of M. Paul Friedberg and Partners; Jordan Goldstein, AIA, of Gensler; and James Carpenter, of James Carpenter Design Associates.
11. The Commission took action at the March 2, 2009, public hearing to approve the plans submitted into the record and the relief requested.

#### **Description of Surrounding Area**

12. The Property is located within the 42-acre site known as the Southeast Federal Center (the "SEFC"). The SEFC is a former annex of the U.S. Navy Yard and is being redeveloped into a mixed-use waterfront neighborhood that will include office space, residential and commercial uses, a waterfront park, and open space.
13. The Property is bounded by the land south of 2<sup>nd</sup> Street to the west, the Washington Navy Yard to the east, proposed Water Street, S.E. and River Street, S.E. to the north<sup>2</sup>, and the Anacostia River to the south. To the west of the Property is a D.C. Water and Sewer Authority Pumping Station, and further to the west of the Property is the Washington Nationals' Baseball Stadium. The Navy Yard Metrorail station is located approximately 1/3 mile north of the Property.
14. A former lumbershed (the "Lumbershed Building") is located on the Property, and is considered to be a contributing building in the Washington Navy Yard Historic District Expansion.

#### **Project Overview**

15. Consistent with the purposes and objectives of the SEFC Overlay and the SEFC/W-0 Zone District, the Applicant designed a pedestrian-oriented park that provides

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<sup>2</sup> The proposed new streets are the subject of a street dedication application known as S.O. 07-8802, which is currently pending before the D.C Council.

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- opportunities for passive and active experiences and draws new as well as repeat visitors to the park. Three architectural elements are intended to encourage these experiences and are integral to the park itself. These include (1) a pedestrian bridge; (2) an artistic sculptural element on the water; and (3) restaurants and other retail in three pavilions near Water Street, S.E. Through the bridge, marker, and retail buildings, the park will create eclectic experiences for its guests, promote return visits, and facilitate a sense of community affinity for the park.
16. The Commission approved Phase I of the park, which included the overall design and layout of the park and certain structural elements within the park, on May 29, 2008 in Order No. 08-04.
  17. Phase II of the Park consists of the renovation and improvement of the existing two-story Lumbershed Building, construction of two new two-story retail pavilions, and construction of the visual marker along the waterfront (the "Project" or "Phase II").
  18. The Lumbershed Building was originally built as an open-air structure and used for drying lumber. The Lumbershed Building will be enclosed in order to protect its structure and adapt the building for its retail use, but the transparency of the enclosure will preserve the open-air feel of the original building. The Applicant presented multiple design schemes for the exterior façade at the public hearing, and stated that the final design would be selected based on continued conversations with the U.S. Commission of Fine Arts, the State Historic Preservation Officer, the National Park Service, and other stakeholders.
  19. The new retail pavilions have been designed to provide a transition from the low-scale waterfront setting to the south to the urban mixed-use development to the north, and take their design cues from the height, massing, and other features of the Lumbershed Building.
  20. The retail spaces in the Lumbershed Building and new pavilions will be devoted to the uses listed in Section 925 of the Regulations, which are permitted in the W-0 Zone District as a special exception. In conjunction with the approval of these uses, the Applicant also seeks approval for use of the kiosks located under the "Overlook" with uses permitted in the Open Space Area of the SEFC/W-0 Zone District under 1805.6 of the Regulations. The kiosks were approved by the Zoning Commission in Phase I.
  21. The proposed visual marker is intended to serve as a piece of public art that will draw visitors through the neighborhood and park down to the waterfront. The Applicant has commissioned James Carpenter Design Associates to design this sculptural element based on their extensive experience in creating architectural and sculptural works that combine the artistic potential of light and materials to enhance public spaces and places. During the day, the marker will serve as a subtly shimmering figure within the park that visually

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connects the upper level of the park to the activity of the promenade. At night, the top portion of the marker will be internally illuminated, recalling some of the historic light house and channel markers of the waterfront. The visual marker has been designed to reflect the location's historic origins as a shipyard and industrial site, and has been sited on a north-south axis with the Lumbershed Building to reinforce the historic relationship of the buildings to the Anacostia River.

### Zoning Overview

22. The W-0 Zone District permits a maximum height of 40 feet, density of 0.5 FAR, and lot occupancy of 25%. Only limited recreational uses are permitted as a matter-of-right; other uses are permitted as a special exception.
23. When mapped with the SEFC Overlay, the SEFC/W-0 Zone District has additional requirements detailed in § 1805 of the Zoning Regulations. The SEFC/W-0 Zone District is divided into two subareas: the Open Space Area and the Development Area. The SEFC/W-0 Zone District permits the allocation of density within the SEFC/W-0 Zone District from the Open Space Area to the Development Area, and the gross floor area of the Lumbershed Building is excluded from any FAR computation. The SEFC/W-0 Zone District permits limited uses in the Open Space Area as a matter-of-right, but allows for additional uses in the Open Space Area with approval by the Commission. The SEFC/W-0 Zone District permits the full set of uses allowed in the W-0 Zone District within the Development Area. Finally, the SEFC/W-0 Zone District permits the construction of multiple buildings on a single lot.
24. In total, the Project will feature approximately 59,598 square feet of retail and other approved uses in three buildings. Pursuant to § 1805.9 of the Regulations, the gross floor area of the Lumbershed Building does not count towards the total FAR of the Project, and the Project therefore contains approximately 25,475 square feet of gross floor area attributable to density in the pavilions, for a density of less than 0.1 FAR. The three retail pavilions will have heights less than 40 feet, and will occupy approximately 14.3% of the underlying lot (Lot 801 in Square 771).
25. The proposed visual marker will measure approximately 60 feet in height. As measured from Water Street, the height of the visual marker is approximately 51 feet, due to the slope of the park towards the water. The proposed visual marker is located along the promenade and bulkhead.
26. The Applicant anticipates that most of the arriving visitors and patrons will be on foot, given the proximity of the site to the proposed new development in the Southeast Federal Center and the Navy Yard Metrorail Station. Therefore, the Project provides multiple points for pedestrian ingress and egress, including from the street grid to the north as well as through future connections to the west and east along the Anacostia waterfront. The

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Project also provides for bicycle circulation to and around the waterfront park. Given the pedestrian- and transit-friendly location and availability of other parking options in the nearby area, the Project does not include any vehicular parking.

### **Design, Use, and Special Exception Approval**

27. The Applicant requested design approval of the exterior renovations of the Lumbershed Building and proposed construction of the new pavilions and visual marker pursuant to § 1805.11 of the Zoning Regulations. The Applicant also requested approval pursuant to § 1805.6 of the Zoning Regulations to permit the uses listed in § 1805.6 in the waterfront kiosks, which are located in the Open Space Area of the SEFC/W-0 Zone District. In addition, pursuant to § 1809.1 of the Zoning Regulations, the Applicant requested special exception approval pursuant to § 925.1 of the Zoning Regulations to permit the retail and service uses listed in § 925.1 in the three retail pavilions in the Development Area of the SEFC/W-0 Zone District, as well as flexibility to locate these uses within the proposed buildings.
28. The proposed Project and uses are consistent with the standards for evaluation set forth in the W-0 Zone District. Pursuant to § 927.1, the renovation of the Lumbershed Building, new retail pavilions, visual marker, and related uses will enhance the visual and public recreational opportunities offered along the waterfront by providing active pedestrian-oriented uses that will attract visitors to the waterfront and supplement the recreational opportunities provided by the park uses. The buildings and uses are located so as to minimize adverse impacts on the river and riverbank areas. Furthermore, the buildings and uses are located so as not likely to become objectionable to surrounding property because of noise, traffic or parking. As designed, the park does not include any parking, which is consistent with the goals and policies of the W-0 Zone as well as the SEFC Overlay.
29. The proposed Project and uses also meet the Zoning Commission review standards set forth in § 1808 of the SEFC Overlay as follows:
  - a. The proposed uses and structures will help achieve the objectives of the SEFC Overlay District, through a mixture of retail and service uses in a suitable height, bulk, and design that is consistent with the Comprehensive Plan, Anacostia Waterfront Initiative, and other District planning documents. The Project has been sensitively designed to incorporate and feature the historically significant Lumbershed Building and provide reduced height and bulk along the riverfront in order to ensure views over and around waterfront buildings. As a result of the proposed design and related relief, the proposed retail pavilions and visual marker will enhance the development of a publicly-accessible park along the Anacostia River and encourage active, vibrant use of the park.

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- b. The proposed improvements have been designed with heights, bulk, and sitings that provide for openness of view and vistas to and from the waterfront.
  - c. No parking is proposed, consistent with the requirement of the SEFC Overlay that limits on or above-grade parking adjacent to or visible from the street and, more particularly, discourages parking in the SEFC/W-0 Zone District.
  - d. The proposed uses and improvements are compatible with existing and proposed buildings in the surrounding area through overall massing, siting, and details.
  - e. The renovated Lumbershed Building and new pavilions are designed with façades that eliminate unarticulated blank walls along the public streets to the north and east as well as along the public park to the south and west.
  - f. The proposed uses include many of the preferred uses contemplated in § 1807 of the SEFC Overlay.
  - g. The pavilion uses, kiosk uses, and visual marker all further the active and passive recreational uses in the waterfront park.
30. The proposed project and uses are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and tend not to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps. The proposed structures and uses are suitable for the site and will supplement and enhance the variety of active and passive recreational uses that are required by the Zoning Regulations. Furthermore, they will support and enliven the uses proposed for the rest of the Southeast Federal Center, and positively impact surrounding properties on both sides of the Anacostia River, by providing lively retail and entertainment options at an attractive and inviting location.

**Special Exception Relief: Roof Structures**

31. The Applicant requested special exception relief, pursuant to 11 DCMR § 411.11, from § 930.3 of the Regulations, to permit roof structures on the new retail pavilions not meeting the setback requirements of the Zoning Regulations.
32. The proposed roof structures are designed so as to relate to the massing and structural characteristics of the Lumberyard Building. Furthermore, the mechanical equipment has been located on top of the stairwells to minimize the amount of total roof structure space. The roof structures will not block views of the water or waterfront park.
33. The proposed design of the roof structures will not cause objectionable conditions or adversely affect neighboring or nearby property. The relief is consistent with the intent

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of the Zoning Regulations and Zoning Map and does not compromise the character of the SEFC/W-0 Zone District or the proposed waterfront park. To the contrary, the requested relief will improve the functionality of the buildings as well as their aesthetic appeal and its design. In addition, the encroachment into the standard setback will not adversely affect the use of neighboring property. The buildings are located in the heart of the Southeast Federal Center and the only properties affected by this are future developments by the Applicant, all of which will be significantly taller buildings.

### Variance Relief

34. Pursuant to §§ 1809.1 and 3103.2, the Applicant requested variance relief from the parking requirements of § 2101.1. The Applicant also requested variance relief from the height (§ 930.1) and waterfront setback (§ 938.1) requirements of the W-0 Zone District for the visual marker. This variance relief is required in order to ensure that the Project is consistent with the clear directives of the W-0 Zone District, the SEFC Overlay, and the master plan for the Southeast Federal Center.
35. Under the three-prong test for an area variance, an applicant must demonstrate (1) that the property is affected by an exceptional or extraordinary situation or condition, (2) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (3) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. (*Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 541 (D.C. 1972).) In order to prove “practical difficulties”, an applicant must demonstrate first that compliance with the area restriction would be unnecessarily burdensome and second that the practical difficulties are unique to this particular property.

### Exceptional Condition

36. The Property is subject to exceptional conditions that arise from the unique nature of the public-private partnership and related agreements that govern its development. While the Property is owned by the federal government, it was authorized for private development by an Act of Congress in 2000. (*See Southeast Federal Center Public-Private Development Act of 2000, Pub. Law. 106-407 (2000) (the “Act”).*) The Applicant prepared a Development Plan for the entire Southeast Federal Center, which included Urban Design Guidelines and Minimum Design Standards (together, the “Master Plan”) that were developed under the authority of the Act and approved by the GSA in its selection of the Applicant as the master developer for the SEFC. The Zoning Commission’s approval of this Master Plan, through the implementation of the SEFC Overlay, was intended to ensure that future development of the Southeast Federal Center would proceed according to the Development Plan as well as the Urban Design Guidelines and Minimum Design Standards.

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37. GSA and the Applicant also entered into Memoranda of Understanding with the National Capital Planning Commission and the U.S. Commission of Fine Arts regarding the development of the Southeast Federal Center. These MOUs reinforced the Development Plan, Urban Design Guidelines, and Minimum Design Standards as the baseline for future development of the property, and set forth a process for continuing review and comment by these federal agencies on the development of the site. Finally, GSA and the Applicant entered into a Programmatic Agreement intended to ensure that the State Historic Preservation Officer, surrounding property owners, and other stakeholders receive an opportunity to review and comment on each proposed development and its impact on the SEFC's historic resources.
38. These regulatory and contractual obligations, which require an active pedestrian-oriented waterfront park with retail and service uses that will serve as a citywide destination, establish the "exceptional conditions" for the Property. As a result of the Overlay and agreements, development of the Southeast Federal Center must not be inconsistent with the Master Plan, which sets forth a series of specific design guidelines for the waterfront area. Specific guidelines include the promotion of land uses that activate the waterfront, such as waterfront-oriented retail and service uses; the siting of structures that interpret the historically important maritime context of the site; and the establishment of the waterfront park as a local, citywide, and regional destination. The guidelines promote buildings and land uses in the park that "reinforce the active nature of this key public destination."

#### Parking Requirement – Practical Difficulty

39. In the W-0 Zone District, the Zoning Regulations require one parking space for each additional 750 square feet of retail or service gross floor area in excess of the first 3,000 square feet. Here, the Zoning Regulations require approximately 30 spaces for the proposed development, based on the proposed 25,475 square feet of new retail space. (No parking is required for the renovated Lumbershed Building, which is a contributing building in a historic district.)
40. Strict application of the parking requirement of the Zoning Regulations is inconsistent with the exceptional condition of the Property. First, it is impractical to require vehicular parking spaces within a pedestrian-oriented park setting. Second, the general requirement for vehicular parking is inconsistent with the more specific provisions of the SEFC/W-0 Zone District that discourage parking, as discussed further below.

#### Height and Setback Requirements – Practical Difficulty

41. Section 930.1 of the Zoning Regulations establishes a height limit of 40 feet in the W-0 Zone for all buildings and structures. Furthermore, § 938.1 of the Zoning Regulations establishes a minimum setback inland from the bulkhead of not less than 100 feet to any building or structure. The proposed visual marker will measure 60 feet in height, as

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measured from the base of the structure, and will be located along the bulkhead, within the required setback.

42. Again, strict application of the height and setback requirements is inconsistent with the exceptional conditions that govern the Property. These exceptional conditions (i.e., the Master Plan and related agreements) establish a clear mandate for an active waterfront park that attracts visitors from throughout the city and region through multiple engaging elements. These agreements also require design review of the park by federal and District agencies as well as other stakeholders, who evaluate the proposed design against the guidelines and standards that govern the Master Plan. These entities have all endorsed the proposed visual marker as a feature that will draw people to the park, consistent with the purposes of the Master Plan. The marker's height and location along the waterfront have been chosen for specific design and aesthetic reasons, and are key elements that permit the marker to activate the waterfront park. A different location would frustrate the intended interpretive potential of the visual marker, and a lesser height would seem out of scale with the surrounding buildings, smokestacks, ships' masts, and other structures along the waterfront.

#### No Detriment to the Public Good

43. A variance from the parking requirement can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. The parking variance will have no negative impact. Here, the proposed buildings are located well within walking distance of the Navy Yard Metrorail Station. Further, given the quantity of existing surface parking available and future parking that will be available on other parcels following the buildout of those sites, there will be sufficient parking to accommodate the proposed uses. Finally, while the Zoning Regulations ostensibly include a general requirement for parking for "retail uses," this general requirement is superseded by the more specific provisions of the SEFC Overlay that prohibit parking in the SEFC/W-0 Zone District. The SEFC Overlay is clear that when there are conflicts between it and the underlying zoning, the provisions of the SEFC Overlay govern. (11 DCMR § 1800.2.) Surface parking lots are specifically prohibited in the W-0 Zone, and the SEFC/W-0 Zone District denotes one of its purposes is to "discourage parking" in that zone. (11 DCMR §§ 902.1(l); 1805.1(c).) Therefore, variance relief from the parking requirements will not create a substantial detriment to the public good, and will not impair the intent, purpose, or integrity of the zoning plan.
44. Variances from the height and setback requirements can also be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. The requested relief is minor and will allow for the creation of a public art feature that will substantially benefit the public. The height of the marker is appropriate given the height of surrounding and nearby structures, and the location will not adversely impact the waterfront.

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### Office of Planning Report

45. By report dated February 20, 2009, OP recommended approval of the proposed design, uses, and related relief. OP found that the proposal is generally consistent with the Comprehensive Plan and the Near Southeast target area objectives within the Anacostia Waterfront Initiative Framework Plan. OP found that the proposal is also generally consistent with the W-0 Waterfront District and the SEFC Overlay regulations and guidelines. OP found that the development would encourage viability of the waterfront park by adding retail and service uses, encouraging pedestrian activity, and linking neighborhood uses to the park and river to the south. OP also found that the requested areas of special exception and variance relief satisfied the relevant tests. Based on its determination that the Project would further the development of the Anacostia River as a community and regional destination, OP recommended approval of the application, including the requested zoning relief.

### CONCLUSIONS OF LAW

1. The application was submitted, pursuant to 11 DCMR §§ 1805.11 and 1809, for review and approval by the Commission. The application, pursuant to 11 DCMR § 1809.1, also requested special exception and variance relief for the proposed development.
2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to AND 6D, OP, and to owners of property within 200 feet of the Property.
3. Pursuant to 11 DCMR § 1805.11, the Commission required the Applicant to satisfy the required burden of proof to approve the overall design of the Project, and the uses in the waterfront kiosks, in accordance with the standards specified in § 927 and procedures specified in § 928, and the standards set forth in § 1808 and procedures set forth in § 1809. Pursuant to 11 DCMR §§ 1809.1 and 3104, the Commission also required the Applicant to establish the case for special exception approval to permit the retail and service uses in the three retail pavilions in the Development Area of the SEFC/W-0 Zone District, as well as flexibility to locate these uses within the proposed buildings. Pursuant to 11 DCMR §§ 1809.1 and § 3104, the Commission also required the Applicant to establish the case for special exception relief from the roof structure requirements of §§ 930.3 and 411.11.
4. Lastly, pursuant to 11 DCMR §§ 1809.1 and 3103, the Commission required the Applicant to satisfy the requirements for variance relief from the parking requirements of § 2101.1, height requirement of § 930.1, and waterfront setback requirement of § 938.1. Under the three-prong test for an area variance, an applicant must demonstrate (1) that the property is affected by an exceptional or extraordinary situation or condition, (2) that the strict application of the Zoning Regulations will result in a practical difficulty to the

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- applicant, and (3) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan.
5. The Commission concludes that the Applicant has satisfied all the necessary elements for all the relief requested.
  6. The proposed buildings are within the allowable height, bulk, and density standards of the Zoning Regulations and the height and density will not cause an adverse effect on any nearby properties. The proposed development has been appropriately designed to adaptively reuse the historic Lumbershed Building and provide new retail pavilions that complement the Lumbershed Building as well as existing and proposed buildings adjacent to the Property with respect to height and mass. The renovations to the Lumbershed Building, proposed new retail pavilions, and visual marker will work in concert with the previously-approved elements of the park to further the SEFC/W-0 Zone District's objective of an active publicly-accessible park along the Anacostia River. The proposed retail, service, and other waterfront-related uses are appropriate for the site and will encourage a variety of support and visitor-related uses in the park, including ground-level retail uses. The impact of the project on the surrounding area is negligible and any potential adverse impacts have been ameliorated.
  7. No person or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
  8. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
  9. The Commission is required under D.C. Official Code § 1-309.10(d) to give "great weight" to the issues and concerns of the affected ANC expressed in its written report. As reflected in the Findings of Fact, at its duly noticed meeting held on February 9, 2009, ANC 6D, the ANC within which the Property is located, voted 6-0-1 to support the application for SEFC Overlay District review and related relief.
  10. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04.) As reflected in the Findings of Fact, OP presented a report and testimony at the public hearing in support of the application.
  11. Based on the record before the Commission, having given great weight to the views of OP and the ANC, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 927 and 1808, as well as the burdens of proof for the requested special exception and variances.
  12. The project that is the subject of this application will promote the development of the SEFC into a viable mixed-use neighborhood which is sensitive to the site's historic

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resources, and which is in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and the Zoning Map of the District of Columbia.

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for SEFC Overlay District review, including **APPROVAL** of all special exception and variance relief requested; provided, that the Project shall be built in accordance with the plans and elevations dated February 10, 2009, and marked as Exhibit 14 of the record, and dated March 2, 2009 and marked as Exhibit 14A of the record, with the flexibility to modify the Lumbershed Building in accordance with the approvals of the U.S. Commission of Fine Arts, National Park Service, and the State Historic Preservation Officer.

On March 2, 3009, upon the motion made by Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** the application at the conclusion of the public hearing by a vote of 5-0-0 (Anthony J. Hood, Gregory N. Jeffries, William K. Keating, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on June 26, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****Z.C. ORDER NO. 08-11****Z.C. Case No. 08-11****(Denial of Map Amendment request by Henok Araya – Square E-475, Lot 1)****December 15, 2008**

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 15, 2008, pursuant to §102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to consider a petition from Mr. Henok Araya (the “Petitioner”). The petition requested review and approval of an amendment to the Zoning Map of the District of Columbia to change the zoning for a portion of Square E-475, Lot 1 (“Property”), from the R-4 to C-2-A Zone District. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3021.

For the reasons discussed below, the Zoning Commission denies the petition.

**Petition and Set Down Proceeding**

The Petitioner initiated this case by filing a petition dated April 23, 2008, requesting a map amendment from the R-4 to the C-2-A Zone District to make the zoning consistent with the District Elements of the Comprehensive Plan for the National Capital: (“Comprehensive Plan”). The Commission set down the case for a public hearing at its July 28, 2008 public meeting, and indicated it was treating the request as a rulemaking case.

**Report of the Office of Planning**

The Office of Planning (“OP”) submitted a final report dated December 10, 2008 recommending denial of the petition. OP based its conclusion on its analysis of the Comprehensive Plan in its totality, including the Plan’s Future Land Use Map, Plan’s Land Use policies, and on the 2005 Convention Center Area Strategic Development Plan.

The Comprehensive Plan’s Future Land Use Map designates the northeastern half of square E-475 for moderate-density residential and commercial uses, and the southwestern half of the square for moderate-density residential uses. However, OP believes this is due largely to the large scale of the map, and not dispositive of any intent by its drafters to include the Property in the commercial corridor. The report explained that the Future Land Use Map is a relatively large scale map not drawn to a smaller scale of accuracy, and not intended to be read with particularity as to individual properties. Because the moderate-density residential and commercial use designation shown is part of a corridor running along the centerline of Florida Avenue, OP believes this designation was intended for properties fronting on Florida Avenue, and was not intended to include properties that did not front on Florida Avenue. The Property does not front on Florida Avenue, and instead fronts on New Jersey Avenue, which OP described as a “well defined rowhouse residential street.” OP stated that they did not believe that the Property was intended to be included in the moderate density residential and commercial use designation of the Future Land Use Map.

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The Comprehensive Plan's Land Use Policy LU-2.3.1, Managing Non-Residential Uses in Residential Areas, provides in relevant part:

Maintain zoning regulations and development review procedures that:

- (a) prevent the encroachment of inappropriate commercial uses in residential areas; and
- (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood.

(10 DCMR § 311.3.)

The 2005 Convention Center Area Strategic Development Plan study, which concludes that there was excess commercially zoned property in this area, and recommended concentrating retail uses on 7<sup>th</sup> and 9<sup>th</sup> Streets.

### **Public Hearing**

The Commission held a public hearing on December 15, 2008. Mr. Araya testified in support of his petition, arguing that it was consistent with the Comprehensive Plan. Mr. Araya's argument was based on the Comprehensive Plan's Future Land Use Map, which depicts a corridor along Florida Avenue as appropriate for "moderate-density residential and commercial" use. The map shows a portion of his property within the "moderate-density residential and commercial" corridor.

OP testified in opposition to the petition, explaining that it believed that the revised zoning designation was inconsistent with the Comprehensive Plan. OP testified that the corridor depicted on Future Land Use Map runs along the centerline of Florida Avenue, and in its interpretation was intended to be limited to those properties that front Florida Avenue. The Property does not front on Florida Avenue and, therefore, OP does not believe it was intended to be included in the moderate density residential and commercial corridor.

### **The Proposed Rezoning is Inconsistent with the Comprehensive Plan**

In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map must be "not inconsistent" with the Comprehensive Plan. § 492(b)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02).

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The Commission concludes that approval of the requested map amendment is inconsistent with the Comprehensive Plan, and therefore must deny the petition.

The Commission is persuaded by the testimony and report of OP that the commercial corridor depicted in the Future Land Use Map along Florida Avenue is intended to apply to only those properties that front Florida Avenue, that the Comprehensive Plan favors preventing encroachment of commercial uses in residential areas, and that an OP small area plan for the area concluded that commercial uses should be concentrated along 7<sup>th</sup> and 9<sup>th</sup> Streets. The Commission accordingly believes that when the Comprehensive Plan is viewed in its totality, it favors commercial uses along Florida Avenue, and the preservation of residential uses on the surrounding property that does not front Florida Avenue. The Commission is convinced that the reason a portion of the Property within the commercial corridor on the Future Land Use Map is due to the relatively large scale of the map, and the lack of precision used when drafting the map with respect to the individual property lines along the corridor, not to an intention to include the Property in the corridor.

#### **Great Weight Given to OP Issues and Concerns**

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. The Commission concurs with OP's recommendation for denial, and has given its recommendation the great weight to which it is entitled.

#### **Great Weight Given to ANC Issues and Concerns**

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the affected ANC's written recommendation. The Commission did not receive a written recommendation from an affected ANC in this case.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **DENIES** the petition for an amendment of the Zoning Map to change the zoning of a portion of Square E-475, Lot 1, from the R-4 to C-2-A Zone District.

On December 15, 2008, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission voted to **DENY** the petition at the conclusion of the Public Hearing by a vote of 3-0-2 (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to deny; Gregory N. Jeffries not present, not voting; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on June 26, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING  
AND**

**Z.C. ORDER NO. 08-22**

**Z.C. Case No. 08-22**

**(Map Amendment – 11 DCMR)**

**(Zoning Consistency Map Amendments Rezoning Portions of Ward 7 from R-5-A to R-1-B,  
R-2, R-3, or R-4)  
December 8, 2008**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 09-07A**

**Z.C. Case No. 09-07A**

**(Scott and Kristen Franklin – Special Exception @ 2269 Cathedral Avenue, N.W.)**

**June 18, 2009**

**Application No. 09-07A of Scott and Kristen Franklin**, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing single-family dwelling under section 223, not meeting the lot occupancy (section 403) requirements in the R-4 District at premises 2269 Cathedral Avenue, N.W. (Square 2210, Lot 803).

**HEARING DATE:** June 18, 2009

**DECISION DATE:** July 18, 2009 (Bench Decision)

**SUMMARY ORDER**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Zoning Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (“ANC”) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C did not submit a report in regard to the application. The Office of Planning (“O”P) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Commission has required the Applicants to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under § 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.

Based upon the record before the Commission and having given great weight to the OP report, the Commission concludes that the Applicants have met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Commission further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Commission has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Commission be accompanied by findings of fact and conclusions of law. It is, therefore, **ORDERED** that this application be **GRANTED**.

**VOTE: 4-0-1** (Anthony J. Hood, Peter G. May, Konrad Schlater, and Michael Turnbull to approve; William Keating not present, not voting).

Z.C. ORDER NO. 09-07A  
Z.C. CASE NO. 09-07A  
PAGE 2

**BY ORDER OF THE D.C. ZONING COMMISSION**  
Each concurring member approved the issuance of this Order.

**FINAL DATE OF ORDER:** June 26, 2009

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE COMMISSION SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE COMMISSION ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE COMMISSION.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT

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